

February 24, 2004

The Honorable Bill Hawks  
Under Secretary for Marketing and Regulatory Programs  
Country of Origin Labeling Program  
Room 2092-S  
Agricultural Marketing Service  
United States Department of Agriculture  
Stop 0249  
1400 Independence Avenue, SW  
Washington, DC 20250-0249

**Re: Docket #LS-03-04, Mandatory Country of Origin Labeling  
of Beef, Lamb, Pork, Fish, Perishable Agricultural  
Commodities, and Peanuts; Proposed Rule**

Dear Mr. Secretary:

The American Frozen Food Institute (AFFI) welcomes this opportunity to provide comments on the Agricultural Marketing Service's (AMS) proposed rule implementing the country of origin labeling provision in the Farm Security and Rural Investment Act of 2002 (hereinafter, mandatory COOL). AFFI is the national trade association representing frozen food manufacturers, their marketers and suppliers. AFFI's more than 500 member companies are responsible for approximately 90 percent of the frozen food processed annually in the United States, valued at more than \$60 billion. AFFI members are located throughout the country and are engaged in the manufacture, processing, transportation, distribution, and sale of products nationally and internationally.

AFFI is mindful of the difficult task AMS faces in trying to implement mandatory COOL. AFFI has long contended that additional country of origin labeling requirements are unnecessary and would impose enormous additional costs on all segments of the food chain. Nonetheless, the 2002 Farm Bill included a mandatory COOL provision that AMS must now interpret and implement. To assist the agency in this work, AFFI filed extensive comments in April, 2003 on AMS's interim voluntary guidelines for country of origin labeling.

AFFI appreciates the steps AMS has taken in the proposed rule to mitigate the burdens mandatory COOL places on manufacturers and

processors of processed food. The agency's tentative decision to permit listing the countries of origin of a mixed origin product in alphabetical order, rather than in descending order according to their contribution by weight to the product, represents a substantial improvement over the interim voluntary guidelines. Likewise, the agency's proposal to treat combinations of covered commodities (e.g., seafood medley) as processed food items represents an important improvement.

Nonetheless, AFFI strongly opposes the proposed rule because it fails to implement fully the exemption from mandatory COOL Congress created for processed food items. As discussed at length in AFFI's April 9, 2003 comments, the legislative history of the COOL provision leaves no doubt that Congress intended to subject only those foods that are not currently required to bear country of origin labeling under the tariff laws to new, mandatory COOL (e.g., fresh fruits and vegetables and fresh fish sold raw at the retail level). The exemption for processed food items in the law memorializes Congress' intent in this regard.

Rather than give full effect to Congressional intent, however, the proposed rule employs an overly narrow interpretation of the processed food item exemption, at odds with its common sense, plain meaning. As AFFI and numerous other commenters have noted, the term "processed" in relationship to food has been defined broadly and consistently by many federal agencies in a variety of contexts.

AMS itself defines "processing" and "processed" to include a wide array of food preparation steps, including freezing, under the Organic Foods Production Act and the voluntary fruit and vegetable grading programs carried out under the Agricultural Marketing Act.<sup>1</sup> Yet the proposed rule ignores this precedent and ascribes a narrow and often inscrutable interpretation of the processed food item exemption (e.g., canned fruits and vegetables are "processed" but canned fish is not). AFFI urges AMS to reconsider carefully the processed food item exemption, in light of both available legislative history and other definitions of processed food put forward by itself and other agencies. These sources demonstrate that the processed food item exemption in mandatory COOL was intended to and should exempt single ingredient frozen

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<sup>1</sup> 7 C.F.R. §§ 205.2, 52.2.

Country of Origin Labeling Program  
February 24, 2004  
Page 3

fruits and vegetables and single ingredient frozen seafood which are already subject to country-of-origin labeling under the tariff laws.

AFFI appreciates this opportunity to comment on the proposed rule.

Sincerely,

A handwritten signature in dark ink, appearing to read "Leslie G. Sarasin". The signature is fluid and cursive, with the first name "Leslie" being more prominent.

Leslie G. Sarasin, CAE  
President and  
Chief Executive Officer